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September 30, 2004
T.R.A. DOCKET ROOM

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VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Exemption of Certain Services*
Docket No 03-00391

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Second Motion to Compel Responses to its First Set of Discovery to AT&T*. Copies of the enclosed are being provided to counsel of record

Cordially,



Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of BellSouth for Exemption of Certain Services*

Docket No. 03-00391

**BELLSOUTH TELECOMMUNICATIONS, INC.'S SECOND MOTION TO COMPEL
RESPONSES TO ITS FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO
AT&T OF THE SOUTH CENTRAL STATES, LLC**

BellSouth Telecommunications, Inc. ("BellSouth") files this *Second Motion to Compel Responses to Its First Set of Interrogatories and Requests for Production of Documents Propounded to AT&T of the South Central States, LLC* ("AT&T") and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

On September 27, 2004, AT&T served its supplemental responses to BellSouth's first set of discovery. In response to each BellSouth's Interrogatories 1 through 5, AT&T again refused to provide responsive information on the basis that

[t]he information requested by BellSouth in this question will be made available to all parties when AT&T files its direct and rebuttal testimony. AT&T objects to providing this information prior to that time.

This response, repeated for each of these interrogatories, is simply unacceptable and does not form the basis of a recognized objection to responding to discovery. Obviously, *all* relevant discovery requests relate to matters which may also be contained in a party's testimony. If parties were permitted to simply say "I'll give

it to you in my testimony" rather than answering discovery, no discovery would ever be answered.

In this case, in particular, AT&T's response is especially problematic. BellSouth, as a petitioner in this docket, will be arguing that PRI service is sufficiently competitive to merit exemption under the statute. All of the other parties in the docket are, therefore, well aware of the general substance of BellSouth's testimony. BellSouth, on the other hand, is at a disadvantage with respect to the intervenors, as it is unclear what contentions they will be making in this docket. BellSouth fashioned its first round of discovery in an effort to obtain information about the general contentions these intervenors would be making in this docket. BellSouth intended for its second round of discovery to follow up, with respect to those contentions, to obtain specific information about the basis for those contentions. AT&T's refusal to provide answers to the first round of discovery has thwarted that process.

Intervenors are not permitted to simply sit by the sideline and editorialize. When a party intervenes to participate in a docket, it must participate fully. That means it must participate in discovery, so that other parties have a fair opportunity to gather facts in order to respond to the contentions or arguments offered by intervenors. For these reasons, BellSouth respectfully urges the Hearing Officer to compel responses from AT&T to the following interrogatories, which are set forth in their entirety below.

INTERROGATORY NO. 1: Please identify each fact witness you intend to present in this docket and, for each, please state:

- a) the subject or subjects upon which the witness will testify;
- b) the basis of the witness' personal knowledge of the matter regarding which witness will testify; and
- c) all facts of which the witness is aware that support the witness' testimony.

RESPONSE :

Witness: Mark E. Argenbright, District Manager, Law and State Government Affairs.

- a) The witness will address PRI service and the associated market in the state of Tennessee.
- b) The witness has worked in the telecommunications industry for over 17 years with 15 of those years in the area of regulatory affairs. His background includes working with product development personnel for such issues as, reporting, tariff filings, and regulatory treatment of various telecommunications products.
- c) The information requested by BellSouth in this question will be made available to all parties when AT&T files its direct and rebuttal testimony. AT&T objects to providing this information prior to that time.

INTERROGATORY NO. 2

Please identify each expert witness you intend to present in this docket and, for each, please state:

- a) the subject or subjects upon which the expert will testify;
- b) the basis for your assertion that the witness is qualified as an expert including, but not limited to, a current curriculum vitae;
- c) all tests, studies, measurements, experiments, or other analysis or actions performed or observed by the expert relating to the expert's testimony;
- d) all opinions that the expert will present in this docket and the basis for each opinion; and
- e) all facts of which you or the expert are aware that support those opinions.

RESPONSE:

See above response to Interrogatory No. 1.

INTERROGATORY NO. 3

Please state whether you will contend in this docket that PRI service is not sufficiently competitive in Tennessee to qualify for exemption under T.C.A. § 65-5-208(b), and if you will contend such, state all bases upon which you will make such contention, and all facts which you believe support such contention.

RESPONSE

See above response to Interrogatory No. 1.

INTERROGATORY NO. 4

Please state whether you agree that competition for PRI services in Tennessee is an effective regulator of price for PRI service, and if you do not agree, please state why you do not agree and all facts that you believe support your position.

RESPONSE

See above response to Interrogatory No. 1.

INTERROGATORY NO. 5

Please identify all ways in which you believe exempting PRI service from tariff requirements would cause harm to any end-user in Tennessee and for each way identified, please explain:

- a) the basis for your belief;
- b) any example of such harm being caused anywhere else in the United States;
- c) how likely you believe that harm would be to occur.

RESPONSE:

See above response to interrogatory No. 1.

CONCLUSION

The foregoing interrogatories were properly propounded and should have been answered timely by AT&T. They were not. AT&T's assertion that it should be permitted to address these matters as part of its testimony, *instead of responding to discovery*, defeats the purpose of discovery. BellSouth is entitled to discover the general contentions parties intend to make in a contested case in order to obtain the factual basis for those contentions as well as the facts *related*

to those contentions, but not supporting such contentions. For these reasons, BellSouth respectfully urges the Authority to issue an order:

1. Compelling AT&T to respond to this first set of interrogatories;
2. Permitting BellSouth to serve an additional follow-up second set of interrogatories as set forth in the schedule agreed to by the parties; and
3. Providing such other relief as the Hearing Officer finds just and reasonable.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By:



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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

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